

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Rule making related to storage of bulk dry animal nutrients

The Agriculture and Land Stewardship Department hereby amends Chapter 49, “Bulk Dry Animal Nutrients,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 200A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 200A.

Purpose and Summary

The purpose of this rule making is to update the distance requirements for the storage of bulk dry animal nutrients.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4698C**. A public hearing was held on October 30, 2019, at 11 a.m. in the second floor conference room of the Wallace State Office Building, Des Moines, Iowa. One person attended the public hearing.

The Department received one comment in support of the rule during the public hearing from the Iowa Cattlemen’s Association, Iowa Poultry Association, and Iowa Turkey Federation.

The Iowa Cattlemen’s Association, Iowa Poultry Association, and Iowa Turkey Federation submitted written comments to the Department in which they suggested the following additions and revisions to the definitions proposed for adoption in Item 1 of the Notice:

1. To supplement the definition of “business,” add the definition of “commercial enterprise” from Iowa Code section 459.102(10).
2. To supplement the definition of “church,” add the definition of “religious institution” from Iowa Code section 459.102(49).
3. To supplement the definition of “school,” add the definition of “educational institution” from Iowa Code section 459.102(27).
4. Substitute the definition of “water of the state” from Iowa Code section 455B.171(41), which is referenced in Iowa Code section 459.102(59), for the proposed definition of “water of the state.”
5. Add the definition of “water source” found in Iowa Code section 459.102(60).

The groups’ comments also included the following suggestions relating to the proposed amendments to rule 21—49.7(200) in Item 2 of the Notice:

1. Revise paragraph “7” by substituting “400 feet” for “500 feet” and by replacing the word “watercourses” with the words “water sources” because “watercourses” is an obsolete term of art.
2. Provide a waiver process for the rule by adding the following new paragraph:
“8. Bulk dry animal nutrients shall not be stored within 500 feet of a residence, business, church, school, or public use area, unless the titleholder of the residence, business, church, school, or public use area executes a written waiver with the titleholder of the land where the bulk dry animal nutrients are stored.”

After full and fair consideration of the comments, the Department adopted the suggested changes submitted by the Iowa Cattlemen’s Association, Iowa Poultry Association, and Iowa Turkey Federation.

The adoption of the changes is within the scope of the original Notice and a logical outgrowth of the comments received on the proposal. No other changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on November 13, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 8, 2020.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Business,” “Church,” “Commercial enterprise,” “Educational institution,” “Grassed waterway,” “Major water source,” “Public use area,” “Religious institution,” “School,” “Water of the state” and “Water source” in rule **21—49.1(200A)**:

“*Business*” means a commercial enterprise.

“*Church*” means a religious institution.

“*Commercial enterprise*” means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

“*Educational institution*” means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade 12 and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

“*Grassed waterway*” means a shaped or graded channel that is established with suitable vegetation for the stable conveyance of runoff.

“*Major water source*” means a water source that is a lake, reservoir, river or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding.

“*Public use area*” means that portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant

periods of time. Facilities include, but are not limited to, picnic grounds, campgrounds, cemeteries, lodges and cabins, shelter houses, playground equipment, swimming beaches at lakes, and fishing docks, fishing houses, fishing jetties or fishing piers at lakes. It does not include a highway, road right-of-way, parking areas, recreational trails or other areas where the public passes through, but does not congregate or remain in the area for significant periods of time.

“Religious institution” means a building in which an active congregation is devoted to worship.

“School” means an educational institution.

“Water of the state” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

“Water source” means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

ITEM 2. Amend rule 21—49.7(200A) as follows:

21—49.7(200A) Storage of bulk dry animal nutrients. A distributor shall not store bulk dry animal nutrients in a manner which pollutes the waters of the state. Storage requirements include the following storing bulk dry animal nutrients shall meet the following storage requirements:

1. Bulk dry animal nutrients shall not be stored in a manner which pollutes the waters of the state.

~~1.~~ 2. Bulk dry animal nutrients shall not be stored in a grassed waterway.

~~2.~~ 3. Bulk dry animal nutrients shall not be stored on ground with a slope of greater than class “B” as defined in the county soil survey.

~~3.~~ 4. Bulk dry animal nutrients shall not be stored within 200 feet of a shallow private water supply well or within.

5. Bulk dry animal nutrients shall not be stored within 100 feet of a deep water supply well.

6. Bulk dry animal nutrients shall not be stored within 500 feet of a surface intake, wellhead or cistern of agricultural drainage wells, known sinkholes or major water sources or within 200.

7. Bulk dry animal nutrients shall not be stored within 400 feet of watercourses water sources other than major water sources (excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided). For purposes of this rule, terms used are considered to have the same meaning as defined in 567—65.1(455B).

8. Bulk dry animal nutrients shall not be stored within 500 feet of a residence, business, church, school, or public use area, unless the titleholder of the residence, business, church, school, or public use area executes a written waiver with the titleholder of the land where the bulk dry animal nutrients are stored.

[Filed 11/13/19, effective 1/8/20]

[Published 12/4/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/4/19.